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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 635

RIN 0578-AA57

NRCS Procedures for Granting Equitable Relief

AGENCY: Natural Resources Conservation Service.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS) issues its final rule implementing the equitable relief authority, and the procedures set forth in section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act), relating to relief for participants for covered programs administered by NRCS. The relief applies to cases where the program participant took action to his or her detriment based on action or advice from an NRCS employee, and situations where the participant acted in good faith, but failed to fully comply with program requirements.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Paulette Craig, National Equitable Relief Specialist, at (301) 504-1650.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, OMB will not review this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. However, this regulation implements section 1613 of the 2002 Act, which is part of Title I of the 2002 Act. Section 1601(c) of the 2002 Act requires NRCS to promulgate regulations or administer Title I without regard to 5 U.S.C. 553. Therefore, NRCS did not prepare a regulatory flexibility analysis for this final rule.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector of \$100 million or more in any one year.

This rule contains no Federal mandates, as defined under Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Public Law 104–121). Therefore, NRCS is not required to delay the effective date for 60 days from the date of publication to allow for congressional review. Accordingly, this rule is effective upon publication in the Federal Register.

Paperwork Reduction Act

Section 1601(c)(2) of the 2002 Act requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of Title 44, United States

Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act as well as continued pursuit of providing all services electronically when practicable. This rule requires that a program participant make a written request for equitable relief for a program administered by NRCS. In part, this rule lends itself to electronic requests as submitted by State Conservationists or participants.

Environmental Analysis

NRCS has determined that changes made by this rule fall within a category of actions that are excluded from the requirement to prepare either an environmental assessment or an environmental impact statement. Administrative changes made in this rule fall within a categorical exclusion for policy development relating to routine activities and similar administrative functions (7 CFR 1b.3(a)(1)) and NRCS has identified no extraordinary circumstances that would otherwise require preparation of either.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis (CRIA) that the final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The CRIA provides responses to the Final rule amendments.

The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including procedures for granting equitable relief for ineligibility for these programs, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in U.S. Department of Agriculture (USDA) programs.

The equitable relief procedures apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the final rule portends no adverse civil rights implications for women, minorities, or persons with disabilities.

Discussion of the Rule 7 CFR Part 635—Equitable Relief from Ineligibility

Section 635.1 Definitions and Abbreviations

This section amends, adds, or removes a number of defined terms in the rule. Specifically, it adds definitions for “appeal rights,” “equitable relief,” “participant,” and “State.” “Appeal rights” is defined to clarify that a decision under this rule may be appealed to the National Appeals Division (NAD). “Participant” and “State” are defined consistent with their statutory definitions. The definitions of “covered program” and “State Conservationist” are simplified. The definition of “Natural Resources Conservation Service (NRCS)” is revised to be consistent with the definition used in other NRCS regulations, and clarifies that the term includes programs administered by the agency using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC).

Section 635.2 Applicability

The amended rule clarifies the application of subsection (a), and strikes subsections (b) and (c) which are no longer needed.

Section 635.3 Reliance on Incorrect Actions or Information

The amended rule makes changes to this section to more closely conform to the language of the statute by enumerating the specific requirements to qualify for relief under this section. These changes do not substantively change the scope of this authority.

Section 635.4 Failure to Fully Comply

Section 635.4 of the amended rule makes changes to this section to more closely conform to the language of the statute by enumerating the specific requirements to qualify for relief under this section. These changes provide more flexibility for State Conservationists and participants to request equitable relief, and do not substantively change the scope of this authority.

Section 635.5 Forms of Relief

The amended rule makes technical and grammatical changes to this section, and removes references to “loans” since NRCS does not have authority to make loans.

Section 635.6 Equitable Relief by State Conservationists

The amended rule restructures and clarifies the existing language of § 635.6. In particular, the revised section explains the limitations on a State Conservationist's authority in a separate subsection, and amends the description of the State Conservationist's authority to more closely reflect the statutory language.

Section 635.7 Procedures for Granting Equitable Relief

The amended rule strikes the list of covered programs in paragraph (a). The definition of "covered programs" sufficiently identifies these programs.

The amended rule allows the Chief, State Conservationist, or participant to initiate a request for equitable relief. Under the current rule, only the participant can initiate a request for equitable relief. The State Conservationist cannot initiate a request even if he or she believes the participant qualifies for such relief. For example, an NRCS employee's misaction or misinformation may impact several different participants, resulting in a number of them being determined ineligible for program benefits. Under the current rule, the participants must request equitable relief from NRCS in order to obtain equitable relief. The State Conservationist cannot initiate an equitable relief request, even if he or she knows that other participants would likely also qualify for equitable relief. Given the potential for treating participants differently, NRCS is amending this procedure to allow the Chief or a State Conservationist to initiate a request for equitable relief for a participant meeting the requirements of this part.

Section 635.7 is also amended to add § 635.7(e) and (f). Paragraph 635.7(e) provides that requests for equitable relief must include any information necessary to determine eligibility under this authority and such other information as required by NRCS to determine whether granting equitable relief is appropriate. This revision reflects that the information needed by the agency to assess equitable relief requests will be provided and updated by applicable policy and procedure at Title 440 of the Conservation Program Manual, Part 509.

Paragraph 635.7(f) provides the participant with appeal rights to the National Appeals Division, pursuant to § 614.9(e) of this chapter, if equitable relief is denied.

List of Subjects in 7 CFR Part 635

Administrative practice and procedure, Agriculture, Conservation programs, Equitable Relief.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 635 is revised to read as follows:

PART 635—EQUITABLE RELIEF FROM INELIGIBILITY

Sec.

635.1 Definitions and abbreviations.

635.2 Applicability.

635.3 Reliance on incorrect actions or information.

635.4 Failure to fully comply.

635.5 Forms of relief.

635.6 Equitable relief by State Conservationists.

635.7 Procedures for granting equitable relief.

Authority: 7 U.S.C. 7996.

§ 635.1 Definitions and abbreviations.

The following terms apply to this part:

Appeal rights means the right of the participant to appeal a decision to the National Appeals Division (NAD) pursuant to part 614 of this chapter.

Chief means the Chief of the Natural Resources Conservation Service or a person with delegated authority to act for the Chief.

Covered program means a conservation program administered by NRCS.

Equitable relief means an action described in § 635.5 of this part.

Natural Resources Conservation Service (NRCS) means an agency of the U.S. Department of Agriculture which has responsibility for administering covered programs, including those using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC).

OGC means the Office of the General Counsel of the U.S. Department of Agriculture.

Participant means a participant in a covered program.

Secretary means the Secretary of U.S. Department of Agriculture.

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State or the State Conservationist's designee.

§ 635.2 Applicability.

This part applies to all covered programs administered by the Natural Resources Conservation Service, except for the Highly Erodible Land and Wetland Conservation provisions of Title XII, subtitles B and C of the Food Security Act of 1985, as amended, (16 U.S.C. 3811 *et seq.*). Administration of this part shall be under the supervision of the Chief, except that such authority shall not limit the exercise of authority by State Conservationists of the Natural Resources Conservation Service provided in § 635.6 of this part.

§ 635.3 Reliance on incorrect actions or information.

The Chief may grant equitable relief to any participant that NRCS determines is not in compliance with the requirements, terms and conditions of a covered program, and therefore ineligible for a payment, or other benefit, if the participant—

- (a) Acting in good faith, relied on action and advice from an NRCS employee or representative of USDA to their detriment;
- (b) Did not know or have sufficient reason to know that the action or advice upon which they relied would be detrimental; and
- (c) Did not act in reliance on their own misunderstanding or misinterpretation of the program provisions, notices, or information.

§ 635.4 Failure to fully comply.

The Chief may grant equitable relief to any participant that NRCS determines is not in full compliance with the requirements, terms and conditions of a covered program, and therefore ineligible for a payment, or other benefit, if the participant—

- (a) Made a good faith effort to comply fully with the requirements; and
- (b) Rendered substantial performance.

§ 635.5 Forms of relief.

- (a) The Chief may authorize a participant in a covered program to:
 - (1) Retain payments or other benefits received under the covered program;
 - (2) Continue to receive payments and other benefits under the covered program;
 - (3) Continue to participate, in whole or in part, under any contract executed under the covered program;
 - (4) Re-enroll all or part of the land covered by the program; and
 - (5) Receive such other equitable relief as determined to be appropriate.
- (b) As a condition of receiving relief under this part, the participant may be required to remedy their failure to meet the program requirement or mitigate its effects.

§ 635.6 Equitable relief by State Conservationists.

(a) State Conservationists' Authority. State Conservationists have the authority to grant requests for equitable relief under this section when—

- (1) The program matter with respect to which the relief is sought is a program matter in a covered program operated within the authorized jurisdiction of the State Conservationist;
- (2) The total amount of relief (including payments and other benefits) that will be provided to the participant under this section during the fiscal year is less than \$20,000;
- (3) The total amount of such relief that has been previously provided to the participant using this section in the fiscal year, as calculated in paragraph (a)(2) of this section, is not more than \$5,000;
- (4) The total amount of payments and benefits of any kind for which relief is provided to similarly situated participants by a State Conservationist in a fiscal year, is not more than \$1,000,000.

(b) Additional limits on authority. The authority provided under this section does not extend to the administration of:

- (1) Payment limitations under part 1400 of this title;
- (2) Payment limitations under a conservation program administered by the Secretary; or
- (3) The highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*).

(c) Concurrence by the Office of the General Counsel. Relief shall only be made under this part after consultation with, and concurrence by, the Office of General Counsel.

(d) Secretary's reversal authority. A decision made under this part by the State Conservationist may be reversed only by the Secretary, who may not delegate that authority.

(e) Relation to other authorities. The authority provided under this section is in addition to any other applicable authority that may allow relief.

§ 635.7 Procedures for granting equitable relief.

(a) The Chief or State Conservationist may initiate a request for equitable relief for a participant that meets the requirement of this part.

(b) Participants may request equitable relief from the Chief or the State Conservationist as provided in §§ 635.3 and 635.4 of this part.

(c) Only a participant directly affected by the non-compliance with the covered program requirements is eligible for equitable relief under this part.

(d) Requests by a participant for equitable relief must be made in writing, no later than 30 calendar days from the date of receipt of the notification of non-compliance with the requirements of the covered conservation program.

(e) Requests for equitable relief must include any information necessary to determine eligibility under this part and such other information as required by NRCS to determine whether granting equitable relief is appropriate. Information needed by the agency to assess equitable relief requests will be provided and updated by applicable policy and procedure.

(f) If equitable relief is denied by the Chief or the State Conservationist, the participant will be provided with written notice of appeal rights to the National Appeals Division, pursuant to 7 CFR part 614.

Signed this ____7th____ day of __October__, 2015, in Washington, D.C.

Leonard Jordan

Associate Chief for Conservation, Natural Resources Conservation Service

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